

## **REMARKS**

### **I. Introduction**

Claims 1-8 are currently pending, with claims 7 and 8 having been withdrawn in response to a restriction requirement. A certified copy of the German priority application (DE 101 10 050.7) is being submitted herewith. An Information Disclosure Statement and accompanying PTO-1449 are submitted herewith. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are in allowable condition.

### **II. Objection to the Drawings**

The Examiner has objected to the drawings on the grounds that the boxes in Figures 1, 2 and 3 should be properly labeled. In response, replacement drawing sheets containing amended Figures 1, 2 and 3 including descriptive labels are submitted herewith.

### **III. Objection to the Specification**

The specification has been objected to on the grounds that the title of the invention is not indicative of the subject matter of the claims. Without passing judgment on the merits of this objection, the title of the invention has been amended in accordance with the Examiner's suggestion.

### **IV. Rejection of claims 1-5 under 35 U.S.C. § 112, first paragraph**

Claims 1-5 have been rejected under 35 U.S.C. § 112, first paragraph, as being non-enabling. In particular, claims 1-5 have been rejected on the grounds that the step of looking for the pattern at one point in time before the "certain point in time" when the pattern is generated is not enabled by the specification.

Without passing judgment on the merits of this claim, claim 1 has been amended to recite that the step of checking whether the pattern is present occurs after the certain point in time when the pattern is generated. In light of this amendment, withdrawal of the enablement rejection of claims 1-5 is respectfully requested.

### **V. Rejection of claim 3 under 35 U.S.C. § 112, second paragraph**

Claim 3 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, it is asserted that memory elements do not generate data. Without

passing judgment on the merits of this rejection, claim 3 has been amended to recite that the pattern is stored in a volatile memory element. Withdrawal of the indefiniteness rejection of claim 3 is accordingly respectfully requested.

**VI. Rejection of claims 1, 2 and 4-6 under 35 U.S.C. § 102(e)**

Claims 1, 2 and 4-6 have been rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,421,773 to Inagaki.

To reject a claim under 35 U.S.C. §102(e), the Office must demonstrate that each and every claim feature is identically disclosed in a single prior art reference. See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). The identical invention must be shown in as complete detail as is contained in the claim. M.P.E.P. §2131.

Independent claim 1, as amended, recites a method of safeguarding at least one program part that is critical to safety against inadvertent execution, which method includes, *inter alia*, the steps of executing the at least one program part in a predetermined chronological sequence and, at a certain point in time in the execution, generating a pattern *using program code that is included in the at least one program part*. It is submitted that Inagaki does not disclose each of these elements of claim 1.

The Inagaki reference describes an external sequence control circuit for testing electronic memory modules, but Inagaki does not pertain to a method of safeguarding at least one program part during execution of a software program. The sequence control circuit provides signals to the memory under test (MUT) offline, but not during execution of any program stored in the memory under test. In contrast to the teachings of Inagaki, the claimed invention provides for generating a pattern using program code that is included in the at least one program part at a certain point in time in the execution of the program code. Thus, the pattern is generated during the chronological sequence of the program code, and its presence or absence can be used as a check to determine whether errors in the program code have caused the program to jump out of sequence. These features are not taught or suggested in any way by Inagaki.

For at least these reasons, it is submitted that Inagaki does not anticipate the subject matter of claim 1 or its dependent claims 2, 4 and 5.

Since claim 6 has been amended in a manner similar to claim 1, it is submitted that Inagaki likewise does not anticipate the subject matter of claim 6.

Withdrawal of the anticipation rejection of claims 1, 2 and 4-6 is therefore respectfully requested.

**VII. Rejection of claim 3 under 35 U.S.C. § 103(a)**

Claim 3 has been rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Inagaki in view of Tinaztepe et al., U.S. Patent No. 5,913,022.

Claim 3 depends from, and incorporates the features of, independent claim 1. It is submitted that the Tinaztepe fails to cure the deficiencies of the primary Inagaki reference as applied against parent claim 1. Tinaztepe does not disclose or suggest generating a pattern using program code that is included in the at least one program part at a certain point in time in the execution of the program code, since Tinaztepe pertains to an external system for testing circuits. (See Tinaztepe, col. 2, lines 7-19).

For the foregoing reasons, the combination of Inagaki and Tinaztepe fails to render claim 3 obvious. Withdrawal of the obviousness rejection of claim 3 is requested.

**VIII. Conclusion**

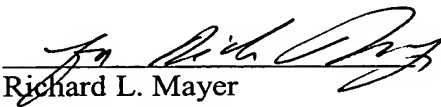
It is therefore respectfully submitted that all of the presently pending claims 1-6 are in allowable condition. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

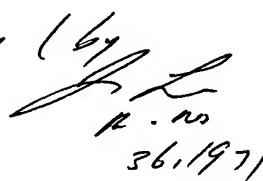
Respectfully submitted,

KENYON & KENYON

Dated: 5/20/05

By:

  
Richard L. Mayer  
Reg. No. 22,490  
One Broadway  
New York, New York 10004  
(212) 425-7200

  
R. L. Mayer  
36,197

**Amendments to the Drawings:**

The attached two (2) replacement sheets of drawings include changes to Figs. 1, 2 and 3. These two replacement sheets, which include Figs. 1, 2 and 3, replace the original sheets including Figs. 1, 2 and 3. In Figs. 1, 2 and 3, descriptive labels for the boxes have been provided.

Attachments: two (2) replacement sheets